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09/652,766	08/31/2000	Douglas Gourlay	CISCO-2357	3544

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EXAMINER

LEE, PHILIP C

ART UNIT	PAPER NUMBER
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2154

13

DATE MAILED: 07/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/652,766

Applicant(s)

GOURLAY ET AL.

Examiner

Philip C Lee

Art Unit

2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4.
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. 11.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

1. This action is responsive to the amendment and remarks filed on April 19, 2004.
2. Claims 1-33 are presented for examination.
3. The text of those sections of Title 35, U.S. code not included in this office action can be found in a prior office action.

*Claim Rejections – 35 USC 112*

4. Claims 1-13 and 20-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - a. Claim language in the following claims is not clearly understood:
    - i. As per claims 1, lines 17-18, it is unclear if “said fixed location” refers to a client computer or a DNS server. If said fixed location refers to a DNS server, then is it possible to receive a DNS request from said fixed location in line 6?
    - ii. As per claim 20, lines 19-20, it has the same problem or uncertainty as in claim 1.
    - iii. As per claim 21, lines 17-18, it has the same problem or uncertainty as in claim 1.

*Claim Rejections – 35 USC 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

6. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 14 and 16-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Emens et al, U.S. Patent 6,606,643 (hereinafter Emens).

8. Emens et al was cited in the last office action.

9. As per claim 14, Emens taught the invention as claimed for using a phased learning approach for determining closest content serving sites to a fixed location in a computer network including:

A DNS request receiver coupled to the fixed location (col. 7, lines 60-62);

A response time determiner coupled to said DNS request receiver and coupled to the content serving sites (col. 7, lines 49-54);

A transit time request sender coupled to said response time determiner and coupled to the content serving sites (col. 7, lines 49-54; col. 8, lines 25-40);

A data receiver coupled to the fixed location (col. 7, lines 60-62);

A memory coupled to said sender (col. 10, lines 3-13); and

A data storer coupled to said data receiver and coupled to said memory (col. 10, lines 3-13).

10. As per claim 16, Emens taught the invention substantially as claimed in claim 14. Emens further taught wherein said transit time request sender includes a transit time request timer (col. 9, lines 26-32).

11. As per claim 17, Emens taught the invention substantially as claimed in claim 14. Emens further taught wherein said response time determiner includes a pinger and a reply receiver (col. 10, lines 14-21).

12. As per claim 18, Emens taught the invention substantially as claimed in claim 14. Emens further taught wherein said transit time request sender includes a response time orderer (col. 10, lines 28-35).

*Claim Rejections – 35 USC 103*

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Emens, U.S. Patent 6,606,643 (hereinafter Emens).

15. As per claim 15, Emens taught the invention substantially as claimed in claim 14. Emens did not teach wherein said response time determiner includes an n fastest content serving site chooser and an m other content serving site chooser. However, Emens taught wherein said response time determiner includes a mirror server manager for choosing the n fastest content serving site and m other content serving site (col. 10, lines 28-42). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teaching of Emens by including an n fastest content serving site chooser and a m other content serving site chooser because doing so would increase the field of use in their systems with different configurations.

16. Claims 1-5, 7-13, 19-25 and 27-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Emens in view of Midorikawa et al, U.S. Patent 5,953,708 (hereinafter Midorikawa) and Shah et al, U.S. Patent 6,446,121 (hereinafter Shah).

17. Midorikawa et al was cited in the last office action.

18. As per claims 1 and 20-21, Emens taught the invention substantially as claimed for using a phased learning approach for determining closest of  $s$  multiple content serving sites to a fixed location in a computer network including:

In an execution phase:

receiving a Domain Name System (DNS) request from said fixed location (col. 3, lines 28-37; col. 8, lines 20-21);

determining a response time for each of  $n$  fastest content serving sites and  $m$  other content serving sites (col. 3, lines 38-58; col. 5, lines 1-17; col. 8, lines 21-36), said  $n$  fastest content serving sites chosen by using said data and choosing the  $n$  content serving sites with lowest transit times (col. 10, lines 28-42), said  $m$  other content serving sites chosen by selecting new content serving sites as well as randomly selecting old content serving sites, wherein  $n$  is less than  $s$  (col. 10, lines 9-12; col. 8, lines 30-36); and

storing said data in said table (col. 10, lines 28-35).

19. Emens did not teach a setup phase and a method of sending transit time request to each of the content serving sites using the response time. Midorikawa taught a system including:

In a setup phase:

storing data as to the transit times of each of the content serving sites in a table  
(col. 15, lines 28-57);

In an execution phase:

sending transit time requests to each of the  $n$  fastest content serving sites and  $m$  other content serving sites, timing said transit time requests so that they arrive at each of the  $n$  fastest content serving sites and  $m$  other content serving sites at the same time by using said response time for each of the  $n$  fastest content serving sites and  $m$  other content serving sites (col. 5, lines 13-40).

20. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Emens and Midorikawa because Midorikawa's method of sending transit time requests to each of the content serving sites using the response time for each of the content serving sites would increase the fairness of each of the content serving sites receiving the transit time requests by avoiding disadvantages in transmission time with respect to a sender of the transit time request and by allowing each content serving sites to receive the transit time requests at the same time (abstract).



21. Emens and Midorikawa did not teach receiving time data from said fixed location. Shah taught receiving data from said fixed location as to the transit times of each of the  $n$  fastest content serving sites and  $m$  other content serving sites (fig. 5; col. 6, lines 24-col. 7, lines 15);

22. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Emens, Midorikawa and Shah because Shah's method of receiving timing data from said fixed location would increase the efficiency of Emens's and Midorikawa's systems by off-loading the process of measuring the transit times from the client.

23. As per claims 2 and 22, Emens further taught the invention wherein said setup phase includes:

receiving a Domain Name System (DNS) request from said fixed location (col. 3, lines 28-37);

determining a response time for each of the content serving sites (col. 3, lines 38-58; col. 5, lines 1-17; col. 8, lines 21-36);

storing said data in a table (col. 10, lines 28-35).

24. Emens did not teach a method of sending transit time requests to each of the content serving sites using the response time. Midorikawa taught a system including:

sending transit time requests to each of the content serving sites, timing said transit time requests so that they arrive at each of the content serving sites at the same time by using said response time for each of the content serving sites (col. 5, lines 13-40).

25. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Emens and Midorikawa because Midorikawa's method of sending transit time requests to each of the content serving sites using the response time for each of the content serving sites would increase the fairness of each of the content serving sites receiving the transit time requests by avoiding disadvantages in transmission time with respect to a sender of the transit time requests and by allowing each content serving sites to receive the transit time requests at the same time (abstract).

26. Emens and Midorikawa did not teach receiving time data from said fixed location. Shah taught receiving data from said fixed location as to the transit times of each of the  $n$  fastest content serving sites and  $m$  other content serving sites (fig. 5; col. 6, lines 24-col. 7, lines 15);

27. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Emens, Midorikawa and Shah because Shah's method of receiving timing data from said fixed location would increase the efficiency of Emens's and Midorikawa's systems by off-loading the process of measuring the transit times from the client.

28. As per claims 3-4 and 23-24, Emens further taught wherein said determining the response time for each of the content serving sites includes:

pinging each of the content serving sites (col. 3, lines 47-51);

receiving a reply from each of the content serving sites (col. 3, lines 51-53); and

determining the response time for each of the content serving sites by computing the difference in time from said pinging to said receiving a reply for each of the content serving sites (col. 3, lines 53-58).

29. As per claims 5 and 25, Midorikawa further taught wherein transit time is the time it takes a content serving site to send a packet to said fixed location after receiving a transit time request (col. 13, lines 14-18, 28-31).

30. As per claims 7-8 and 27-28, Midorikawa further taught wherein said sending transit time requests to each of the content serving sites includes:

sending transit time requests to each of the content serving sites in order of their response times, longest response time first, setting a delay for a transit time request for a particular content serving site from a time of the transit time request to the content serving site with the longest response time as one half of said particular content serving site's response time (col. 16, lines 33-59).

31. As per claims 9-11 and 29-31, Emens, Midorikawa and Shah did not specifically teach wherein  $n$  is 3 and  $m$  is 2, nor wherein  $n$  may be varied based on some criteria. However, Emens taught wherein  $n$  may be varied for selecting the content server sites correspond to mirror servers having a low load (col. 9, lines 1-22). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teaching of Emens to vary  $n$  based on some

criteria because this will allow conservation of resources and reduces traffic on the network. (col. 10, lines 38-42).

32. As per claims 12 and 32, Midorikawa further taught wherein said setup phase occurs when the computer network is first set up (col. 8, lines 42-47).

33. As per claims 13 and 33, Midorikawa further taught wherein said execution phase occurs when the computer network is operating normally (col. 8, lines 42-47).

34. As per claim 19, Midorikawa taught including a phase determiner coupled to said response time determiner, said query sender, and said data receiver (col. 15, lines 61-67).

35. Claims 6 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Emens Midorikawa and Shah in view of Jindal et al, U.S. Patent 6,324,580 (hereinafter Jindal).

36. Jindal et al was cited in the last office action.

37. As per claim 6, Emens, Midorikawa and Shah taught the invention substantially as claimed in claims 1 and 21 above. Emens, Midorikawa and Shah did not teach the content of said data. Jindal taught wherein said data includes at least one record, said record including a transit time, a network address for said fixed location, and a network address for a content

serving site, said transit time being the transit time between said fixed location and said content serving site (col. 4, lines 40-col. 5, lines 4; col. 11, lines 17-28).

38. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Emens, Midorikawa, Shah and Jindal because Jindal's method would enhance Emens's, Midorikawa's and Shah's systems by allowing users to be routed, and their requests satisfied by, the content serving site according to said data (col. 4, lines 49-57).

39. Applicant's arguments with respect to claims 1-33, filed 4/19/04, have been fully considered but are not deemed to be persuasive and are moot in view of the new grounds of rejection.

40. In the remark applicant argued that

- (1) Emens does not teach any limiting of transit time requests, it sends them to all mirror sites.
- (2) Emens does not teach receiving data from said fixed location as to the transit times of each of the  $n$  fastest content serving sites and  $m$  other content serving sites.

41. In response to point (1), Emens taught limiting of transit time requests (col. 8, lines 28-32). Emens further taught selecting subsets of mirror sites to limit the number of mirror sites to which the program will send transit time requests (col. 8, lines 20-36).

42. In response to point (2), Emens and Midorikawa did not teach receiving time data from said fixed location. Shah taught receiving data from said fixed location as to the transit times of each of the  $n$  fastest content serving sites and  $m$  other content serving sites (fig. 5; col. 6, lines 24-col. 7, lines 15);

43. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Emens, Midorikawa and Shah because Shah's method of receiving timing data from said fixed location would increase the efficiency of Emens's and Midorikawa's systems by off-loading the process of measuring the transit times from the client.


44. A shortened statutory period for reply to this Office action is set to expire THREE MONTHS from the mailing date of this action.

45. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip C Lee whose telephone number is (703)305-7721. The examiner can normally be reached on 8 AM TO 5:30 PM Monday to Thursday and every other Friday.

46. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng Ai An can be reached on (703)305-9678. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

47. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)350-6121.

P.L.

 JOHN FOLLANSBEE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100